

YOU CAN'T SIGN AWAY
FIRST AMENDMENT RIGHTS

A Federal court has taken thought control to new limits of absurdity by issuing an injunction against a book that hasn't been written yet. Victor L. Marchetti, who resigned after 14 years as an agent with the CIA, has a contract with Knopf to write a nonfiction book about the agency, and the Federal government has sought, so far successfully, to have it enjoined on the grounds that such a book would "result in grave and irreparable injury to the interests of the United States." It has also asserted that publication of such a book would violate agreements which Mr. Marchetti signed when he joined and when he left the agency not to divulge classified information.

The lower court's ruling for the government has drawn attacks from the Association of American Publishers and from the Authors League, which in separate *amicus curiae* briefs have asserted that this is indeed a First Amendment case, not unlike that which involved the Pentagon Papers, and that moreover it is constitutionally impossible for a person to sign away his First Amendment rights.

The *amicus* briefs argue that, as was true of the Pentagon Papers, the public is entitled to discussion of agencies that vitally affect the interests of the country such as the CIA. Said the Authors League:

"One of the most useful sources of this discussion (and criticism) are former government employees—ex-Presidents (such as Presidents Eisenhower and Johnson), a former director of the CIA such as Allen Dulles, and the many other highly placed officials who have written books and articles about defense, foreign affairs, intelligence, disclosing much information that had not previously been made known to the public. Under the District Court's opinion, the government could accomplish by contract what it could not achieve by statute—prior censorship of such discussion."

The AAP brief bears down hard on the contention that this is a First Amendment case and not, as the government had contended, a case involving its contractual relations with Mr. Marchetti. Involved, it asserts, are not only Mr. Marchetti's rights to speak and write "but the right of the public to listen, to read and, in short, to be informed." It challenges the lower court's ruling giving the CIA "unfettered discretion to determine precisely what Mr. Marchetti can or cannot publish." And it asserts the public's right to information by which it could assess the CIA and its work.

The government has been attempting to encroach on First Amendment rights regularly in the last few years, and just about as regularly, it has been slapped down by the courts. The cases of the Pentagon Papers and the Anderson Papers are but two of the most publicized recent examples of the government's efforts to quell freedom of the press in the name of "security." The Marchetti case is not only the most recent but one of the most flagrant. In this case, the book hasn't even been written yet, and if efforts to stop an unpublished book don't add up to prior restraint on a free press, we don't know what does.

You can't sign away your First Amendment rights. The situation, looked at in the other way, means that government agencies or private employers can't expect anti-First Amendment "loyalty" oaths to stand up when they have their day in court. That is the thrust of the AAP and Authors League *amicus* briefs, and we support them.

Disclosure of government archives is always risky, but democracy is also a risky business and the alternatives are much more frightening. The AAP and the Authors League reaffirm the public's right to know, and we concur, in the face of security considerations that may prove to be oppressive. It is intellectually hard to live under a government which many observers believe has lost its self-assurance. If this is so, a government which has lost its self-assurance is prosecuting the Marchetti case.

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